IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24435 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDIAN POTASH LIMITED - Petitioner(s)
Versus
GUAJRAT MAZDOOR PANCHAYAT & 1 - Respondent(s)

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Appearance :
MR DIPAK R DAVE for Petitioner(s) : 1,
MRS SANGEETA N PAHWA for Respondent(s) : 1,
MR DABHI, A.G.P. for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 06/07/2006

ORAL JUDGMENT

1. Heard the learned advocate Mr. Dipak R. Dave appearing on behalf of the petitioner, learned advocate Mrs. Sangita Pahwa appearing on behalf of the respondent No.1 and learned A.G.P. Mr. Dabhi appearing on behalf of respondent No.2.

2. In the petition, looking to the prayer made in Para 6(A), order of reference dated 27th February 2003 and order passed by the Labour Court on 20th July 2005 and 11th August 2004 in Reference Demand No.19 of 2003 are under challenged. This Court initially issued noticed to the respondents then this Court has also allowed to amend the prayer and also allowed to join Deputy Labour Commissioner as a party respondent No.2 who is referred the matter for adjudication to the concerned Labour Court. This Court has directed to learned A.G.P. Mr. Dabhi to call the conciliation officer for records of membership of concern Union at the time of making reference to the concerned Labour Court, Ahmedabad by order dated 27th June 2006.

3. Learned advocate Mr. Dipak Dave submitted that industrial disputes raised by respondent No.1 – Union not having the sufficient membership to espouse the cause of individual workmen. He also submitted that before conciliation officer, such contention was raised by the petitioner that Union is not having sufficient number of membership for raising individual dispute against the petitioner. He also submitted that before the Labour Court, after receiving the statement of claim from the Union vide Exh.16 written statement was filed by the petitioner and raising

certain contention that reference is not competent, invalid and bad in law. Such preliminary contention was raised by the petitioner, against which, respondent No.1 has filed reply vide Exh.33 and ultimately, Labour Court has examined the preliminary contention raised by the petitioner by order dated 20th July 2005. The second application filed by respondent No.1 – Union with a prayer to restrain the petitioner from vacating the quarter. The application vide Exh.31 filed by the petitioner challenging the validity and legality of reference has been rejected. Therefore, consequences to that, petitioner has challenged the order of reference dated 27th February 2003 directly before this Court. In respect to the application filed by Union with a prayer to restrain the petitioner from vacating the quarters till the industrial dispute is decided. The Labour Court has decided it on 11th August 2004 allowing the application Exh.5 and directed to petitioner restraining from vacating the quarter of the workman concerned till dispute is decided finally between the parties. In terms of reference, appropriate Government has referred the dispute in respect to one Smt. P.E. Sarojini Amma, against whom, transfer order dated 8th March 2001 was passed by the petitioner as referred in terms of reference as to whether such transfer order is required to be set aside or not. In

light of this back ground, in all three orders are under challenged before this Court.

4. This Court first examining the issue which has been decided by the Labour Court vide Exh.31. The preliminary contention which has been raised about the legality and validity of the order of reference on the ground that petitioner – Union is not having sufficient membership of workmen working with petitioner. This aspect has been elaborately discussed by the Labour Court on the ground that Labour Court is not an appellate authority and this order is not challenged before the High Court, therefore, Labour Court should not have power to decide the legality and validity of the order of reference as if appellate authority and therefore, Labour Court has rejected the application. However, Labour Court has also decide the merits as to whether Union having a sufficient membership or not. The Union is authorised by the individual workman, against whom, transfer order was passed by the Management. The Labour Court has considered the facts that as to whether individual dispute can be converted into industrial disputes by relying upon the decision of Apex Court as referred in Para 13 and 14 of the order. The Labour Court has also considered the definition of Section 2(K) of the Industrial Disputes Act, 1947. Before the Labour Court, on behalf of petitioner, four

questions have been raised which referred by Labour Court in Para 7 that as to (i) whether Union is authorized to represent the case of workman; (ii) whether appropriate Government has rightly referred the matter under Section 10(1) of the Industrial Disputes Act, 1947; (iii) Whether individual case of transfer of workman Smt. P.E. Sarojini Amma raised by Gujarat Majdoor Panchayat is authorized or not and (iv) whether such reference is legally maintainable under Section 2(A) of the Industrial Disputes Act, 1947. The Labour Court has answered these all four questions that vide Exh.7, the workman is authorized the Union to appear in the proceeding, therefore, Union is authorized to appear on behalf of the workman. In respect to second contention , the Labour Court has come to the conclusion that legality and validity of reference, Labour Court has no jurisdiction to examine it while exercising the power under Section 10 of the Industrial Disputes Act, 1947. In respect to third contention, the answer is given by the Labour Court that it is not necessary that concerned workman only become a member of particular Union but workman is free to join any registered Union and that Union can espouse the cause of such workman. In respect to fourth contention, it is an individual dispute but espouse by Union, therefore, it converted into industrial disputes. After considering the

definition of industrial disputes under Section 2(K) of the Industrial Dispues Act, 1947, ultimately, the Labour Court has rejected the application vide Exh.31.

5. In response to the direction issued by this Court, the conciliation officer remained present before this Court and shown to this Court a second file of the Conciliation Case No.57 of 2002 which possessed by office of Labour Commissioner, learned A.G.P. Mr. Dabhi submitted that original papers were sent to the Labour Court along with the order of reference, therefore, second file is with the Commissioner of Labour which has been shown to this Court by learned A.G.P. Mr. Dabhi. This Court has perused the file from failure report to conciliation papers. The membership which has been scrutinized by the independent authority being a conciliation officer has not been challenged by the petitioner by producing positive evidence before conciliation officer or before the Labour Court or before this Court. Merely raising the contention that respondent No.1 – Union has not sufficient membership for espousing the cause of individual workman is not sufficient, but petitioner shall have to produce the positive evidence of each workman contrary to the record of conciliation officer. In absence of any positive evidence from the petitioner, the

scrutinization made by conciliation officer in respect to membership, out of twenty five employees, ten employees are the members of Union is considered to be legal and valid. On 4th October 2002, the membership of the Gujarat Majdoor Panchayat in respect to the petitioner's establishment has been scrutinized by the conciliation officer, wherein, in establishment, overall, twenty five workmen are working out of that ten workmen are the members of Gujarat Majdoor Panchayat. Meaning thereby that more than 25% membership have been satisfied by Gujarat Majdoor Panchayat. This report is bared the signature of the concerned officer who is scrutinized the membership of Gujarat Majdoor Panchayat in respect to petitioner's establishment. Thereafter, a docket-sheet where the details have been given by the Union which has been filled up by the concerned officer which required to be send by the conciliation officer along with the failure report. In personal report of Conciliation Case No.57 of 2002, no doubt, the contention raised by the petitioner that Union is not having the membership in his establishment, that membership has been verified by the independent conciliation officer which satisfied the requirement that out of twenty five workmen working with petitioner's establishment, ten workmen are the members of Gujarat Majdoor Panchayat. Therefore, on Union has satisfied

required 25% membership for espouse the cause of individual workman.

6. In light of this file placed before this Court for perusal, the contention raised by the petitioner that Union is not having sufficient membership cannot be accepted. But, decision which has been relied by learned advocate Mr. Dave reported in ***AIR 1970 SC 737*** in case of ***Workmen of Indian Express Newspaper Private Ltd., v. The Management of Indian Express Newspaper Private Ltd.***, is not applicable to the facts of this case only on the ground that decision which was cited before this Court was prior to the amendment of Section 2(A) of the Industrial Disputes Act, 1947 as well as in this case, Gujarat Majdoor Panchayat has espoused the cause of individual workman and satisfied the requirement to have 25% membership amongst the total workman working in the establishment and therefore, out of twenty five workmen working with the establishment, ten workmen are the members of Gujarat Majdoor Panchayat. Accordingly, the decision which has been relied by the learned advocate Mr. Dave is not helpful to him.

7. Therefore, according to my opinion, Labour Court has not committed any error while rejecting the application filed by petitioner vide Exh.31

by order dated 20th July 2005.

8. In respect to the application submitted by Union vide Exh.5 with a prayer to restrain the petitioner from vacating the quarters till the reference is decided by the Labour Court. The workman concerned was having the possession which was handed over by the petitioner with effect from 16th September 1997. From that day, the workman is residing in the quarter which was entrusted by the petitioner to the workman. The workman has been transferred by order dated 8th March 2001 from Ahmedabad to Lucknow in the post of Assistant. This very transfer order is under challenged before the Labour Court by the Union which referred for adjudication to the Labour Court. The petitioner has filed reply against this application vide Exh.11 and pointed out that there is no victimization or malafide intention on the part of the petitioner to transfer the workman from Ahmedabad to Lucknow. The workman concerned has tendered the resignation by letter dated 17th May 2001. After the transfer made by the petitioner, the contention raised by the petitioner that workman has tendered the resignation on 17th May 2001, therefore, she is not entitled the possession of the quarter. Accordingly, deed of entrustment dated 16th September 1997 Condition No.8(A) and (B), petitioner is entitled to possession of the

quarters on two grounds; one is transfer and another is resignation. The Civil Suit was filed against the transfer order being Civil Suit No.1315 of 2001 which was ultimately, withdrawn unconditionally by the workman concerned. These are the grounds raised by the petitioner. Ultimately, Labour Court has examined the application filed by the Union. The Labour Court has come to the conclusion that same contention was raised by the petitioner that reference is bad and not supported by number of membership has no relevancy and therefore, that contention was rejected. In respect to the resignation of the workman dated 17th May 2001 was a compulsion on the part of the workman because she has no choice. Whenever compulsion is there, there is no choice on the part of the workman to accept or not to accept. The situation which has been created by the petitioner against the workman is compel to tender the resignation which has been discussed in resignation itself, therefore, Labour Court has come to the conclusion that it is not a voluntarily resignation given by respondent workman. It is pertaining to note one important aspect that resignation dated 17th May 2001 produced by the petitioner before the Labour Court but whether that resignation has been accepted by the petitioner or not, wisely petitioner remained silent before the Labour Court. In light of this back ground, ultimately,

Labour Court has appreciated the contention raised by both the parties and considering the fact that proceeding which has been initiated by the petitioner – Company under Section 630 of Companies Act, 1956 against the workman concerned which has been stayed by this Court granting interim stay against the Criminal Case No.59 of 2002. Therefore, Labour Court has considered that it is in the interest of justice, so long industrial disputes are referred for adjudication in respect to transfer is finally adjudicated by the Labour Court, the petitioner shall have to be restrained from vacating the quarter from the workman concerned. The cause of vacating quarter is a transfer order which is challenged before the Labour Court, therefore, Labour Court has rightly granted the relief not to vacate the quarter from the workman concerned till the reference is decided by the Labour Court by order dated 11th August 2005. According to my opinion, Labour Court has rightly appreciated the facts which are on record and also rightly appreciated the submissions made by both the parties. According to my opinion, Labour Court has not committed any error while allowing the application Exh.5 filed by the Union.

9. The third order that is the order of reference made by appropriate Government dated 27th February 2003. This Court cannot entertain

such petition wherein the order of reference is challenged by the employer. This Court cannot go into the disputed question of facts and triable issues raised by the petitioner in the present petition. The petitioner having full opportunity of hearing to raise all the contention which has been raised before this Court in pending reference before the Labour Court. Therefore, this Court should not have to entertain the petition filed by the petitioner challenging the order of reference. Such petition should not have to be entertained by this Court and that view has been taken by Delhi High Court in case of ***D.D. Gears Ltd. v. Secretary (Labour) and others*** reported in ***2006 LAB.I.C. 1462.*** The relevant ***Para 21*** is as under :

> ***"Para 21 : It is well settled that a Writ Petition lies only when the rights of some party has been adversely affected. A mere reference under Section 10(1) of the Industrial Disputes Act does not effect anyone,, rights, and hence no Writ Petition should ordinarily be entertained against a mere reference under Section 10(1), as such a petition is premature."***

10. The above view has also been taken by Bombay High Court in case of in case of ***Philips India Limited and Another v. P.N. Thorat, Asst. Commr.***

Of Labour and Conciliation Officer and Others reported in ***2006-I L.L.J. 1013.*** The relevant ***Para 12 and Para 13*** are as under :

> ***"Para 12 : From the above, what emerges is that there are serious triable issues. The contention of the Union and the workmen is that fraud has been practised upon them. If the workmen are able to succeed in proving that the agreement was entered into by playing fraud it will be open to them to avoid the settlement. This issue cannot be answered by this Court at this stage as it would required evidence to be led. Prima facie a Division Bench of this Court in the very proceedings has taken note that the employees involved in both the writ petitions would be workmen. The Apex Court, however, left that question to be decided. At any rate the expression workmen considering Section 2(s) of the I.D. Act would include ex-workmen. That contention of the management that they are not workmen would require adjudication of facts. Based on these findings and the issue of pensionary benefits under VRS it will have to be considered whether the dispute partakes of any industrial dispute. This, again would***

be premature for this Court to decide at this stage and it will be open to the petitioner to raise all issues before the Industrial Tribunal to which the reference is made. Similarly, the contention of the employer that they have complied with the terms of the settlement and consequently there is no industrial dispute and that the employees cease to be workmen will have to be adjudicated upon by the Tribunal.

<u>Para 13</u> : Considering the above, in our opinion, this would not be a fit case where this Court should exercise its extraordinary jurisdiction. In the light of that both the petitions stand dismissed. In the circumstances of the case, there shall be no order as to costs.“

11. The above view has also been taken by this Court in case of in case of ***Indian Institute of Management v. Gujarat Majdoor Sabha & Ors. (Ahmedabad)*** reported in ***2006 (2) G.C.D. 1227 (Gujarat).***

12. In light of this, according to my opinion, petition against the challenge of order of

reference is not maintainable because petitioner having a full opportunity to make their submission or to raise contention before the Labour Court which are raised before this Court against the order of reference. This Court cannot examine the disputed question of facts while exercising the power under Article 226 and 227 of the Constitution of India. Therefore, against that challenge, petition should not be entertained by this Court, accordingly, not entertained.

13. In light of the above observation made by this Court and this Court having a limited power to scrutinize the orders are in question while exercising the power under Article 227 of the Constitution of India. The view express by Apex Court in case of ***Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh pardeshi*** *reported in* ***(1995)6 SCC 576****.* The following observations are relevant which are quoted as under :

> ***"The High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave in justice would be***

done unless the High Court interferes.”

14. After considering this observation of Apex Court and reasoning given by the Labour Court, according to my opinion, there is no grave injustice would be done to the petitioner if this Court will not interfere under Article 227 of the Constitution of India.

15. The present petition is dismissed. However, it is directed to the Labour Court, Ahmedabad to decide the main Reference (L.C.A.) Demand No.19 of 2003 within a period of six months from the date of receiving the copy of the said order after giving reasonable opportunity to both the parties in accordance with law and without influence by observations made this Court while examining the order in question and decide independently and adjudicate the dispute in accordance with law.

[H.K. RATHOD, J.]

#Dave